

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 PAUL HERNANDEZ,) Case No. C 14-4475 PSG (PR)
12)
13 Petitioner,) **ORDER OF DISMISSAL**
14 v.)
15 SANTA CLARA COUNTY,)
16 Respondent.)

17
18 Paul Hernandez, a California state prisoner proceeding *pro se*, seeks a writ of habeas
19 corpus pursuant to 28 U.S.C. § 2254. In the underlying federal petition, Hernandez challenged
20 the criminal judgment against him, and conceded that he had not raised any claims in the
21 California Supreme Court. On January 22, 2015, the court issued an order to Hernandez to show
22 cause why the petition should not be dismissed for failure to exhaust state remedies. Although
23 Hernandez was warned that the failure to file a timely response would result in the dismissal of
24 this case, Hernandez did not file a response.

25 As the court previously advised Hernandez, prisoners in state custody who wish to
26 collaterally challenge either the fact or length of their confinement in federal habeas corpus
27 proceedings are first required to exhaust state judicial remedies, either on direct appeal or
28 through collateral proceedings, by presenting the highest state court available with a fair

1 opportunity to rule on the merits of each and every claim the prisoners seek to raise in federal
 2 court.¹ The exhaustion requirement is satisfied only if the federal claim has been “fairly
 3 presented” to the state courts.² The state’s highest court must be given an opportunity to rule on
 4 the claims even if review is discretionary.³ A federal district court must dismiss a federal habeas
 5 petition containing any claim as to which state remedies have not been exhausted.⁴

6 According to Hernandez’s petition, it appears that Hernandez has been convicted of
 7 criminal charges, but Hernandez had not filed a direct appeal or pursued any other state
 8 proceeding challenging his criminal convictions except for one state habeas petition filed in the
 9 Superior Court. Thus, it appears that Hernandez has not fairly presented his claims in the
 10 underlying federal petition of habeas corpus to the highest state court. Accordingly, the court
 11 DISMISSES this action without prejudice for failure to exhaust.

12 The federal rules governing habeas cases brought by state prisoners require a district
 13 court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its
 14 ruling.⁵ Hernandez has not shown “that jurists of reason would find it debatable whether the
 15 petition states a valid claim of the denial of a constitutional right.”⁶ Accordingly, a COA is
 16 DENIED.

17 IT IS SO ORDERED.

18 DATED: 5/8/2015


 PAUL S. GREWAL
 United States Magistrate Judge

21 ¹ See 28 U.S.C. § 2254(b)-(c).

22 ² See *Picard v. Connor*, 404 U.S. 270, 275 (1971) (citations omitted); *Peterson v.*
 23 *Lampert*, 319 F.3d 1153, 1155-56 (9th Cir. 2003) (en banc).

24 ³ See *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (petitioner must invoke “one
 25 complete round of the State’s established appellate review process.”).

26 ⁴ See *Rhines v. Webber*, 544 U.S. 269, 273 (2005).

27 ⁵ See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

28 ⁶ *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).